



# AIA® Document A133® – 2019

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**AGREEMENT** made as of the «\_\_\_\_\_» day of «\_\_\_\_\_» in the year «\_\_\_\_\_»  
(In words, indicate day, month, and year.)

**BETWEEN** the Owner:

(Name, legal status, address, and other information)

Union County, North Carolina  
500 N. Main Street  
Monroe, NC 28112

and the Construction Manager:

(Name, legal status, address, and other information)

«Edifice, LLC  
4111 South Boulevard  
Charlotte, NC 28209  
North Carolina General Contractor's License #10514»

for the following Project:

(Name, location, and detailed description)

«Union County Water Operation Center»  
«4600 Gold Mine Rd  
Monroe, NC 28110»

The Architect:

(Name, legal status, address, and other information)

«Progressive Architecture Engineering, P.C. »«»  
«330 South Tryon Street, Suite 500»  
«Charlotte, NC 28202»

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

« The project is currently proposed to be constructed on the premises of the current operations center in Monroe, NC. The anticipated building size is approximately 30,000 sq. ft. and will contain general offices for Administration, Engineering, Operations, Customer Service that includes customer friendly drive-thru for various transactions and warehouse space. In addition to this, a Renovation of approximately 3,300 gsf of existing Ops Center to leverage efficiencies in space utilization. »

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of*

*public and private utilities and services; legal description of the site, etc.)*

« To Be Determined »

**§ 1.1.3** The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:  
*(Provide total and, if known, a line item breakdown.)*

«Currently the project budget is Fourteen Million Dollars (\$14,000,000.00) »

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

«TBD »

.2 Construction commencement date:

«TBD »

.3 Substantial Completion date or dates:

«TBD »

.4 Other milestone dates:

«TBD »

**§ 1.1.5** The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

*(Identify any requirements for fast-track scheduling or phased construction.)*

« Not Applicable »

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:

*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

« Not Applicable »

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

**§ 1.1.7** Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere.)*

« Not Applicable »

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 4.2:

*(List name, address, and other contact information.)*

Christopher Boyd  
Facilities Management Director  
Union County  
1407 Airport Road  
Monroe, NC 28110

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
(List name, address and other contact information.)

«Christopher Boyd  
Facilities Management Director  
Union County  
1407 Airport Road  
Monroe, NC 28110 »

**§ 1.1.10** The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

**.1** Geotechnical Engineer:

«Terracon Consultants, Inc. »« »  
«2701 Westport Road »  
«Charlotte, NC 28208 »  
«704-509-1777 »

**.2** Civil Engineer:

« »« »  
« »

**.3** Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

TBD

**.4** **Building Commissioning Services:**  
**To Be Determined**

**§ 1.1.11** The Architect's representative:  
(List name, address, and other contact information.)

«Donald Green »  
«Sr. Project Manager »  
«Progressive Architecture Engineering, P.C. »  
«330 South Tryon Street, Suite 500 »  
«Charlotte, NC 28202 »  
«DGreen@weareprogressive.com »

**§ 1.1.12** The Construction Manager identifies the following representative in accordance with Article 3:  
(List name, address, and other contact information.)

« **Michael A. Carlisto** »  
« **Executive Vice President** »  
« **Edifice, LLC** »  
« **4111 South Boulevard** »  
« **Charlotte, North Carolina 28209** »  
« **mcarlisto@edificeinc.com** »  
« **704-332-0900** »

**§ 1.1.13** The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  
(List any Owner-specific requirements to be included in the staffing plan.)

« See attached Preconstruction Services Scope and Fee »

**§ 1.1.14** The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

« Construction Manager will be required to follow State of North Carolina guidelines for prequalification of Subcontractors for all bid packages and to present for review and approval a HUB participation plan.  
**On public projects in North Carolina, follow all procurement requirements for Construction Management at Risk projects as written in NC G.S. 143-128.** »

**§ 1.1.15** Other Initial Information on which this Agreement is based:

« **TBD – Implement Design Documents into the contract at GMP** »

**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information that modify the basis for the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment.

**§ 1.3** The Owner's representative shall not be changed without ten days' prior notice to the Construction Manager. The Construction Manager's representative shall not be changed without Owner's prior written approval which shall not be unreasonably withheld.

**§ 1.4** Any reference to the AIA Document A201™ – 2017, General Conditions of the Contract for Construction refers to the modified version of that document negotiated by Owner and Construction Manager.

## **ARTICLE 2 GENERAL PROVISIONS**

### **§ 2.1 The Contract Documents**

The Contract Documents form the Contract and consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents identified in the Guaranteed Maximum Price Amendment and revisions to the Drawings and Specifications prepared by the Architect. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### **§ 2.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement in that it has represented itself as having expertise in estimating scheduling and construction means and methods, as well as with work of similar scope, size, and complexity. Construction Manager further covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner will require the Construction Manager to contract directly with such Subcontractors as may be necessary for construction or supply of the Project. All such contracts, and the procurement of such contracts, shall be issued consistent with the applicable provisions of this Agreement and the General Conditions.

### **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials and Substances; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017

shall mean the Construction Manager. To the extent there is a conflict between the terms of the A201–2017 and this Agreement, the terms of this Agreement shall govern.

**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term “Contractor” as used in A201–2017 shall mean the Construction Manager. To the extent there is a conflict between the terms of the A201–2017 and this Agreement, the terms of this Agreement shall govern.

### **ARTICLE 3 CONSTRUCTION MANAGER’S RESPONSIBILITIES**

The Construction Manager’s Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1 and 3.2 and are the only services authorized to be performed based on the execution of this Agreement. No Construction Phase services shall be commenced and Construction Manager shall not be entitled to be paid for any services other than the Preconstruction Phase services unless and until the Owner and Construction Manager execute the Guaranteed Maximum Price Amendment, and the Owner issues a written Notice to Proceed with respect to the Construction Phase services. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

#### **§ 3.1 Preconstruction Phase**

##### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect or Owner may require.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner’s program, schedule and construction budget requirements, each in terms of the other. At the start of the Preconstruction Phase, the Construction Manager shall conduct a project conference attended by the Architect, Owner, and others as necessary.

##### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall make recommendations to the Owner and Architect, consistent with the Project requirements, with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and separation of the Project contracts for various categories of Work, keeping in mind that the time sensitive nature of this Project and that any such accommodations shall not materially impact time for design or construction in a negative manner. In addition, the Construction Manager shall give to the Architect all data of which it is aware concerning patents or copyrights for inclusion in Contract Documents.

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project.

##### **§ 3.1.4 Construction Management Plan**

The Construction Manager shall prepare a Construction Management Plan for the Project and shall make recommendations for revisions to the plan throughout the duration of the Project, as may be appropriate. In preparing the Construction Management Plan, the Construction Manager shall consider the Owner’s schedule, budget, and design requirements for the Project. The Construction Manager shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be presented to the Owner for acceptance. During the Preconstruction Phase, the Construction Manager shall make the recommendations to the Owner regarding revisions to the Construction

Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan.

### **§ 3.1.5 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified in accordance with the Construction Management Plan, the Construction Manager shall prepare and regularly update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's written approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

### **§ 3.1.6 Phased Construction**

The Construction Manager, in consultation with the Architect and Owner, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### **§ 3.1.7 Cost Estimates**

**§ 3.1.7.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's written approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 3.1.7.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval in writing. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

**§ 3.1.7.3** If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 3.1.8** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's written approval.

**§ 3.1.9** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

**§ 3.1.10** The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and written approval.

**§ 3.1.11** If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

### **§ 3.1.12 Approvals by Regulatory Services**

To the extent requested by Owner, the Construction Manager may coordinate transmittal of documents to regulatory agencies for review and, in such case, shall advise of potential problems in completing such reviews within the time

required to complete the Project within the Contract Time.

### **§ 3.1.13 Public Meetings**

The Construction Manager shall prepare information for and attend public meetings regarding the Project as requested by Owner.

### **§ 3.1.14 Cost Management**

#### **§ 3.1.14.1 Cost Control**

The Construction Manager shall assist the Owner in preparing documents concerning the Project and Construction Budget and for use in obtaining or reporting on Project funding. The documents shall be prepared in a form approved by the Owner.

#### **§ 3.1.14.2 Project and Construction Management Plan Revision**

The Construction Manager shall make recommendations to the Owner concerning the design changes that may result in revisions to the Project and Construction Management Plan and the divisions of the Work required for the Project.

#### **§ 3.1.14.3 Value Engineering Studies**

The Construction Manager shall provide value engineering recommendations to the Architect for review and the Owner for written approval for major construction components, including cost evaluations of alternative materials and systems.

### **§ 3.1.15 Time Management**

#### **§ 3.1.15.1 Revisions to Project Schedule**

As necessary throughout the Preconstruction Phase, the Construction Manager shall recommend revisions to the Project Schedule for review by the Architect and written approval by the Owner.

#### **§ 3.1.15.2 Pre-Bid Project Schedules**

Prior to transmitting Contract Documents to bidders, the Construction Manager shall prepare a Pre-Bid Project Schedule for each part of the Project for review by the Architect and written approval by the Owner and provide the schedule to bidders during the Procurement Phase.

### **§ 3.1.16 Preconstruction Phase Reports**

#### **§ 3.1.16.1 Schedule Reports**

The Construction Manager shall prepare and distribute schedule update reports that shall contrast actual progress against scheduled progress for the Preconstruction Phase and the overall Project and shall make recommendations for review by the Architect and written approval by the Owner for corrective action to ensure that the schedule milestones are met.

#### **§ 3.1.16.2 Construction Budget Cost Reports**

The Construction Manager shall prepare and distribute project cost reports that shall indicate estimated costs compared to the Project and Construction Budget and shall make recommendations to the Owner for corrective action if the estimated costs exceed the Project and Construction Budget.

### **§ 3.1.17 Subcontractors and Suppliers**

**§ 3.1.17.1** If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

**§ 3.1.17.2** The Construction Manager shall develop bidders' interest in the Project.

**§ 3.1.17.3** The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

**§ 3.1.17.4** The Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from pre-qualified Subcontractors in accordance with the Union County Policy for Pre-Qualification of Bidders for Construction Projects and N.C.G.S. § 143-128.1, and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and Owner in accordance with N.C.G.S. § 143-128.1. The Construction Manager may self-perform a

portion of the Work only if (i) bidding procedures produce no responsible, responsive bidder for that portion of the Work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the Work, or the Subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner; and (ii) the Owner approves of the Construction Manager's performance of the Work.

### **§ 3.1.18 Procurement**

**§ 3.1.18.1** The Construction Manager shall prepare, for the Architect's review and the Owner's written acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction ("Long Lead Times"). With the Owner's written consent, Construction Manager may, prior to the establishment of the Guaranteed Maximum Price, procure Long Lead Items on terms and conditions acceptable to the Construction Manager and Owner as part of the Preconstruction Phase Services so long as such procurement complies with all applicable statutory requirements.

**§ 3.1.18.2** The Construction Manager shall develop lists of potential bidders, publicly advertise bids as prescribed in N.C.G.S. § 143-129, and shall prequalify such bidders for all construction of the Work. It shall be noted in the bid advertisements and associated documents that all submitted bids will be publicly opened and become public records upon opening under Chapter 132 of the North Carolina General Statutes. The Construction Manager shall use the prequalification process determined and developed by the Owner in accordance with N.C.G.S. § 143-135.8, provided that the Owner and the Construction Manager shall jointly develop the assessment tool and criteria for the Project, which must include prequalification scoring values and minimum required scores for prequalification. The Construction Manager shall also prepare and transmit to the Owner a list of prequalified and disqualified bidders for each bid package. The Construction Manager shall provide the Owner with the reasons that any prospective bidders have been disqualified. Unless otherwise agreed to in writing by the Owner, the Construction Manager shall have a minimum of 3 prequalified bidders for each bid package. Prior to soliciting or prequalifying bidders, the Construction Manager must submit to the Owner, and the Owner must approve, a document describing the Construction Manager's plan for compliance with N.C.G.S. § 143-128.2. The Construction Manager must also make a good faith effort to comply with N.C.G.S. §§ 143-128 and 143-128.4, and to recruit and select small business entities.

### **§ 3.1.19 Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

### **§ 3.1.20 Other Preconstruction Services**

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

### **§ 3.1.20.1 Pre-Bid Conference**

In conjunction with the Architect, the Construction Manager shall conduct a Pre-Bid Conference. These conferences shall be forums for the Construction Manager and Architect to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, contractor interfaces, the project administrative requirements, and technical information.

### **§ 3.1.20.2 Information to Bidders**

The Construction Manager shall develop and coordinate procedures to provide answers to bidders' questions. The Construction Manager shall inform the bidders of their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or Contract Documents. The Construction Manager shall also inform the bidders of the Owner's requirements for scheduling and communication between the parties and shall provide a copy of the most current Project Schedule to the bidders.

### **§ 3.1.20.3 Addenda**

The Construction Manager shall receive from the Architect a copy of all addenda and review addenda for clarity, consistency, and coordination. The Construction Manager shall distribute a copy of all addenda to each bidder receiving documents.

#### **§ 3.1.20.4 Bid Opening**

The Construction Manager shall act as the fiduciary of the Owner in handling and opening bids. All bids shall be received and opened in a manner agreed upon by the Owner, but in all cases shall be opened publicly. All such bids shall be public records under Chapter 132 of the North Carolina General Statutes upon opening. The Construction Manager shall conduct bid openings and shall coordinate with the Owner and Architect to evaluate the bids. Contracts shall be awarded to the lowest responsive, responsible bidder, taking into consideration quality, performance, and time specified for performance, the cost of construction oversight, time for completion, compliance with N.C.G.S. § 143-128.2, and other factors deemed appropriate by the Owner and advertised as part of the bid solicitation. The Construction Manager shall submit a Guaranteed Maximum Price proposal to submit to Owner that incorporates the Construction Manager's recommendation to the Owner concerning the acceptance or rejection of bids. The Owner may require the selection of a different Subcontractor for any portion of the Work, consistent with N.C.G.S. § 143-128.1, provided that the Construction Manager is compensated for any additional cost incurred.

#### **§ 3.1.20.5 Construction Contracts**

Construction contracts for the Work required for the Project shall be between the Construction Manager and Subcontractors. The Construction Manager shall not be entitled to additional time to complete the Project due to any delay in entering into contracts with a bidder/Subcontractor except to the extent the delay is due to the actions or inactions of the Owner. The Construction Manager shall also issue the notices to proceed to the Subcontractors upon receipt of the notice to proceed from the Owner to the Construction Manager. The Construction Manager shall not issue Contract Documents or notices to proceed with the Work to the Subcontractors until the Owner and Construction Manager have agreed upon a Final Guaranteed Maximum Price that incorporates the results of the bids from Subcontractors and the Owner has notified the Construction Manager that it can proceed with the Work.

#### **§ 3.1.20.6 Permits, Insurance, and Labor Affidavits**

The Construction Manager shall secure and shall verify that each Subcontractor has secured the required building permits, bonds, insurance, labor affidavits, and waivers necessary for the Project.

#### **§ 3.1.20.7 Analyzing Bids**

Upon receipt of bids, the Construction Manager shall, in conjunction with the Architect and Owner, evaluate the bids, including alternate prices and unit prices, and shall award the subcontracts based on criteria set forth in Section 3.1.20.4 above.

### **§ 3.2 Guaranteed Maximum Price Proposal**

**§ 3.2.1** Upon receipt of all bids, or earlier if reasonably requested by the Owner in writing, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the total Cost of the Work, as well as all contingencies, allowances, and the Construction Manager's Fee. At the time of submission of the Guaranteed Maximum Price to the Owner, the Construction Manager shall also submit the Progress Schedule upon which the Guaranteed Maximum Price is based. The Progress Schedule shall be in accordance with the requirements of the Contract Documents. The Guaranteed Maximum Price is the total cost of the Work, as defined herein. The Guaranteed Maximum Price includes the cost of all labor, equipment, supplies, materials, services, and allowances required to complete the Project. The cost data from the Guaranteed Maximum Price shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The Construction Manager's Fee

**§ 3.2.2** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract which were used in preparation of the Guaranteed Maximum Price proposal;
- .2 A list of allowances and a statement of their basis;
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications;

- .4 A statement of the proposed Guaranteed Maximum Price, including a Schedule of Values organized by trade categories, allowances, contingencies, and other items in the Construction Manager's Fee and the Construction Manager's contingency set forth in Section 3.2.4 that comprise the Guaranteed Maximum Price;
- .5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .6 A schedule of the Construction Documents, including issuance dates, upon which the date of Substantial Completion is based.

**§ 3.2.4** The Guaranteed Maximum Price shall also establish a Construction Manager Construction Contingency allowance. Unless otherwise agreed in writing, the Construction Manager's Construction Contingency allowance shall be used to perform the Work, address scheduling and coordination problems, correct scope gaps in the bidding of the Project, correct code and regulatory deficiencies and other concealed or unknown conditions that are not submitted and approved as the subject of a Change Order in accordance with the terms of the Agreement. The Construction Manager's use of the Construction Manager's Construction Contingency allowance shall be adequately documented by the Construction Manager with such documentation being provided to Owner in a timely fashion. Once 75% of the Construction Manager's Construction Contingency allowance has been used, Construction Manager must obtain Owner's prior written approval before utilizing the Construction Manager's Construction Contingency allowance for amounts in excess of \$25,000. Items subject to being covered by the Construction Manager's Construction Contingency allowance shall not be the basis for a Change Order request increasing the Guaranteed Maximum Price.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner, Architect, or the Construction Manager discovers any inconsistencies or inaccuracies in the information presented, the Construction Manager shall promptly notify the Owner and Architect in writing and shall make appropriate adjustments to the Guaranteed Maximum Price proposal.

**§ 3.2.6** Unless the Owner accepts the Guaranteed Maximum Price and executes the Guaranteed Maximum Price Amendment and issues a written Notice to Proceed with respect to the Construction Phase of the Project, the Guaranteed Maximum Price proposal shall not be effective and this Agreement shall terminate. Upon such termination, the Construction Manager shall only be entitled to payment for Preconstruction Services as set forth herein. The Construction Manager shall, if requested by the Owner upon termination, assign to Owner any subcontractor, material supply agreements or other agreements related to the Project that were entered into as part of Preconstruction Services.

**§ 3.2.7** Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

**§ 3.2.8** The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with the schedules agreed to by the Owner, Architect, and the Construction Manager. The Construction Manager shall promptly notify the Owner and Architect in writing if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

**§ 3.2.9** Unless otherwise approved in writing by the Owner, the Construction Manager may only use buyout savings obtained from certain Subcontractors to offset buyout overages from other Subcontractors. Any buyout savings in excess of buyout overages shall be addressed through a deductive Change Order reducing the Guaranteed Maximum Price to reflect such buyout savings.

#### **§ 3.2.10 Taxes**

The Guaranteed Maximum Price shall include those taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Any sales tax refunds paid to the Owner shall be exclusively for the Owner's use and shall not in any way reduce the cost of the Project or impact the Guaranteed Maximum Price. The Construction Manager shall track and report all sales tax in accordance with Exhibits D & E.

#### **§ 3.2.11 Execution of Guaranteed Maximum Price Amendment**

Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in the Guaranteed Maximum Price Amendment. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment only as specifically provided in the Contract Documents.

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 3.3.1.2** The Construction Phase shall not commence until the Owner accepts the Construction Manager's Guaranteed Maximum Price proposal executing the Guaranteed Maximum Price Amendment, issues a written Notice to Proceed with Construction Phase services, and provides the Construction Manager reasonable access to the Site.

#### **§ 3.3.2 Pre-Construction Conference**

The Construction Manager, shall conduct a Pre-Construction Conference during which the Construction Manager shall review the reporting procedures, Site operations, and other contractual requirements.

#### **§ 3.3.3 Onsite Management and Construction Phase Communication Procedures**

The Construction Manager shall provide and maintain a management team on the Project Site to provide contract administration and shall supervise the Work with the Contract Documents.

#### **§ 3.3.4 Administration**

**§ 3.3.4.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

#### **§ 3.3.4.2 Contract Administration Procedures**

The Construction Manager shall establish and implement procedures for expediting and processing requests for information, shop drawings, materials and equipment sample submittals, Subcontractor schedule adjustments, Change Orders, substitutes, payment requests, and the maintenance of logs. The Construction Manager shall be the party through whom requests for information, submittals, Subcontractor schedule adjustments, substitutes, Change Order requests, and payment requests shall be submitted.

**§ 3.3.4.3** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### **§ 3.3.4.4 Monthly Report**

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

#### **§ 3.3.4.5 Daily Logs**

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing an accurate record for each day of weather conditions at the Site, Subcontractors working on the Site, portions of the Work in progress, Work accomplished, number of workers on Site, identification of equipment on Site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner. The Owner shall have no duty to respond to any information in the daily logs.

#### **§ 3.3.4.6 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.4.4 above.

#### **§ 3.3.4.7 Coordination of Testing and Inspection**

Technical inspection and testing required by the State or local authorities, the Architect, or other consultants shall be coordinated by the Construction Manager. The Construction Manager shall be provided with a copy of all inspection and testing reports on the day of the inspection or test when issued.

#### **§ 3.3.4.8 Quality Review**

The Construction Manager shall establish and implement a program to monitor the quality of construction. The Construction Manager shall inspect the Work for conformance with the Contract Documents and shall guard the Owner against defects and deficiencies in the Work. The Construction Manager shall transmit to the Subcontractor a notice of any nonconforming Work and may reject Work when it is the opinion of the Construction Manager that the Work does not conform to the requirements of the Contract Documents. The Construction Manager is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. The Architect and Owner shall have the final authority to decide the acceptability of the Work.

#### **§ 3.3.4.9 Operation and Maintenance Manuals**

The Construction Manager shall receive from the Subcontractors and provide to the Owner operation and maintenance manuals, warranties, and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents.

### **§ 3.4 Time Management**

#### **§ 3.4.1 Progress Schedule**

The Progress Schedule (also referred to as the "Schedule" or "Construction Schedule") shall be prepared by the Construction Manager using the critical path method. The Progress Schedule shall be detailed to a degree which will permit proper and complete coordination of all trades for each and every portion of the Work, including any design elements of the Work.

#### **§ 3.4.2 Staging Plan**

The Construction Manager shall prepare and submit a staging plan for the Work that is acceptable to Owner. The Owner must approve the staging plan prior to commencement of the Work at the Site.

### **§ 3.5 Cost Management**

#### **§ 3.5.1 Schedule of Values**

The Schedule of Values shall be established by the Guaranteed Maximum Price Amendment and shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single, separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and the Owner may require. This Schedule of Values, when approved in writing by the Architect and the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. Any changes to the Schedule of Values must be submitted to the Owner for approval before being presented as a Change Order.

### **§ 3.6 Change Order Control**

The Construction Manager shall forward all proposed Change Orders in a request for proposal to the Subcontractor, accompanied by technical drawings and specifications prepared by the Architect. In response to the request for a proposal, the Subcontractor shall submit to the Construction Manager for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed Change Order work. The Construction Manager shall review the Subcontractor's proposal, shall discuss the proposed Change Order with the Subcontractor and endeavor to determine the Subcontractor's basis for the cost and time to perform the Change Order work and, as applicable, the effect, if any, on the Guaranteed Maximum Price. The Construction Manager shall present its findings to the Owner and, following Owner acceptance, shall prepare the Change Order documents for signature by the Construction Manager, Architect and Owner. Upon execution of the Change Order documents between the Construction Manager, Architect, and Owner, the Construction Manager shall prepare Change Order documents for signature by the affected Subcontractor. The Construction Manager shall verify that the Work, and any adjustment of time required by the approved Change Orders, has been incorporated into the Subcontractor's Construction Schedule.

#### **§ 3.6.1 Cost Records**

In instances where a lump sum or unit price is not established prior to performing Work either in a request for proposal or in an Amendment to this Agreement, the Owner or Architect shall receive from the Construction Manager records of the cost of payroll, materials and equipment and the amount of payments to subcontractor

incurred by the Contractor in performing the Work.

### **§ 3.6.2 Trade-Off Studies**

The Construction Manager shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the Owner and Architect.

## **§ 3.7 Additional Construction Phase Reports**

### **§ 3.7.1 Schedule Maintenance Reports**

The Construction Manager shall prepare and distribute monthly schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Project Schedule.

### **§ 3.7.2 Project and Construction Budget Revisions**

The Construction Manager shall make recommendations to the Owner concerning construction changes that may result in revisions to the Construction Budget or Guaranteed Maximum Price.

### **§ 3.7.3 Cash Flow Reports**

The Construction Manager shall, if requested by the Owner, prepare and distribute cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow.

### **§ 3.7.4 Change Order Reports**

The Construction Manager shall periodically prepare and distribute Change Order reports during the Construction Phase. The reports shall list all Owner-approved Change Orders by number, a brief description of the Change Order work, the cost established in the Change Order, and percent completion of the Change Order work. The reports shall also include similar information for potential Change Orders of which the Construction Manager may be aware. The reports shall also include a summary of the impact of the Change Orders on the project schedule and completion dates.

### **§ 3.7.5 Subcontractor's Safety Program**

The Construction Manager shall review the safety program of each Subcontractor and confirm that each Subcontractor has established a safety program as required by the Contract Documents.

## **§ 3.8 Post Construction Phase**

### **§ 3.8.1 Record Documents**

The Construction Manager shall coordinate and expedite submittals of information from the Subcontractors for preparation of record drawings and specifications, and shall coordinate and expedite the transmittal of such record documents to the Owner.

### **§ 3.8.2 Organize and Index Operations and Maintenance Materials**

Prior to final completion of the Project, the Construction Manager shall compile manufacturers' operations and maintenance manuals, warranties, and guarantees and bind such documents in an organized manner. A minimum of three (3) copies of this information shall then be provided to the Owner.

### **§ 3.8.3 Occupancy Permit**

The Construction Manager shall assist the Owner in obtaining the final occupancy permit by accompanying governmental officials during inspection of the Project, preparing and submitting documentation to governmental agencies, and coordinating final testing and other activities.

### **§ 3.8.4 Closeout Documents and Test Reports**

The Construction Manager shall organize and provide the Owner all closeout documents and test reports that the Subcontractors are required to provide for the Project.

### **§ 3.8.5 Owner Training**

The Construction Manager shall coordinate or provide all training of the Owner's personnel required by the Contract Documents.

### **§ 3.8.6 Occupancy Plan**

The Construction Manager shall prepare an Occupancy Plan for the Project. This plan shall be provided to and approved by the Owner.

### § 3.9 Other Services

The following shall also be provided as part of the Work:

- .1 Services related to the onsite and offsite coordination of Owner-furnished equipment, materials, supplies, and furnishings for the Project;
- .2 Preparation of a Project financial feasibility study if requested by the Owner;
- .3 Preparation of financial, accounting, or other reports as requested by the Owner or Architect;
- .4 Preparation of an Operation and Maintenance Manual for all materials and equipment reasonably required for the Owner's use of the Project;
- .5 Performance of warranty inspections and correction of warranty items during the warranty period of the Project;
- .6 Services made necessary by the failure to perform by or bankruptcy of a Subcontractor;
- .7 Preparation for and serving as a witness regarding the Construction Manager's observations on the Project in connection with any public or private hearing, mediation, or other legal proceedings;
- .8 Assisting the Owner in public relations activities and preparing information for and attending public meetings; and
- .9 Assisting the Owner through coordination of move-in activities.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

### § 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

#### § 4.1.2 *Intentionally Omitted.*

§ 4.1.3 The Owner shall establish and update the Construction Budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Unless otherwise instructed in writing, the Construction Manager shall be entitled to reasonably rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including invert and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested in writing by the Construction Manager, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services

under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

**§ 4.1.6** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

#### **§ 4.2 Owner's Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

#### **§ 4.2.1 Intentionally Omitted.**

#### **§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as modified and executed by the Owner and Architect in relation to the Project and as subsequently amended. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

### **ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

#### **§ 5.1 Compensation**

**§ 5.1.1** For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

« Construction Manager shall be paid a Lump Sum of Eighty-Nine Thousand and Seven Hundred and Ninety-Eight dollars and 00/00 (\$ 89,798.00) which includes all costs, expenses, and fees for Preconstruction Services. See Exhibit "G" – Preconstruction Services Fee and Exhibit F- Scope of services, attached for further information. If the project does not proceed for any reason, then the Construction Manager shall be paid actual costs to date. »

« See attached Preconstruction Fee Schedule and Scope of Services for further information. »

**§ 5.1.2** The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« See attached Preconstruction Fee Schedule and Scope of Services for hourly rates to be used to calculate fees that are supplemental to any work not covered under the lump sum scope of work in Exhibit F »

Individual or Position	Rate
§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.	

#### **§ 5.2 Payments**

**§ 5.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 5.2.2** Payments are due and payable upon presentation of the Construction Manager's accurate and complete invoice. Amounts otherwise due but unpaid «forty-five» ( «45» ) days after the Owner's receipt of the accurate and complete invoice shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing

from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

«2» % «per year»

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

#### § 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

«The Construction Managers Fee will be finalized and agreed upon by all parties executing this contract in the AIA Document A133-2019, Exhibit A, Guaranteed Maximum Price Amendment.»

#### § 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« If a Change Order does increase the Guaranteed Maximum Price, the Construction Manager's Fee for the Work may increase in an amount equal to the Cost of the Work associated with the Change Order plus Construction Manager's Fee as set forth in Section 6.1.2. If a Change Order does not increase the Guaranteed Maximum Price, Construction Manager's Fee shall not be increased. »

#### § 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« 15% on any work performed by a Subcontractor. The term "Subcontractor" as used herein includes any sub-subcontractors at any level. »

§ 6.1.5 The rental rate utilized by the Construction Manager shall not exceed the AED Green Book rate for the item. The total rental cost of any Construction Manager-owned item or equipment may not exceed eighty-five percent (85%) of the fair market value of the item the day it was first placed at the site. In addition, rotation of equipment in such a manner as to exceed the above threshold is prohibited. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval. In no event shall any such rentals be paid to Construction Manager or to any affiliate or company owned by or related to Construction Manager unless approved in advance by Owner. Rented or leased vehicles are acceptable as a standard business practice providing it does not constitute a one-time benefit to an employee.

§ 6.1.5.1 Rental charges for items not listed in the AED Green Book shall be supported with a detailed breakdown of the basic components for the rental charges as well as any backup documentation reasonably requested by the Owner.

#### § 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

« The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Contract Documents. In the event that Construction Manager does not achieve Substantial Completion of the Work within the Contract Time as established by the Guaranteed Maximum Price Amendment to this Agreement (taking into account extensions of the Contract Time as set forth herein), Construction Manager shall pay Owner liquidated damages in the amount set forth in the Guaranteed Maximum Price Amendment per day for each day that Construction Manager fails to achieve Substantial Completion of the Work. Construction Manager acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty in light of the difficulty of accurately determining the full extent of Owner's damages if this Project is not completed on time. Accordingly, instead of requiring any such proof, Owner and Construction Manager agree that Construction Manager shall pay Owner liquidated damages as set forth above for delays related to Substantial Completion of the Work. »

### § 6.1.7 Other:

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

« »

### § 6.2 Guaranteed Maximum Price

**§ 6.2.1** The Construction Manager guarantees that the Cost of the Work plus the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

**§ 6.2.2** The Guaranteed Maximum Price shall also include a not to exceed allowance for the Construction Manager's general conditions of the Work. Construction Manager shall provide such backup as the Owner may request to substantiate actual general conditions costs incurred with each application for payment, and all such amounts shall be subject to audit as provided herein.

**§ 6.2.3** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include substantial changes in scope, systems, or kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

### § 6.3 Changes in the Work

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment shall only occur as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.3** The Construction Manager shall submit invoices per vendor/subcontractor proposals showing the price paid for all materials, supplies, equipment, rental cost, etc. that are part of the Change Order. In addition, the labor burden and labor rates used for the Change Order work shall be supported with documentation showing that these figures represent the actual cost, unless such labor rates are pre-audited rates approved by the Owner and included in an Amendment. Any cost included in a Change Order may only be the audited and properly documented actual cost.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

**§ 6.3.5** No Change Order shall increase the Guaranteed Maximum Price unless the Change Order specifically recites that it has the effect of increasing the Guaranteed Maximum Price.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

**§ 7.1.1** The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article and shall not include any costs associated with home office personnel or any overhead costs, because such items are included as part of the Construction Manager's Fee. For purposes of calculating the Construction Manager's Fee, Cost of the Work shall not include the cost of insurance and bonds.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost or other item is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost or taking any proposed action.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

## **§ 7.2 Labor Costs**

**§ 7.2.1** Owner shall conduct a Pre-Construction Phase audit of the proposed labor costs for the Construction Manager's personnel or negotiate agreed upon rates with Construction Manager. Based on the results of that audit or negotiated rate, Owner and Construction Manager agree that the hourly rate for each of Construction Manager's employees shall be those set forth in the Guaranteed Maximum Price Amendment to this Agreement. Such hourly rates shall include the following:

**§ 7.2.2** That portion of the reasonable wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior written approval.

**§ 7.2.2.1** That portion of the reasonable wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work.

**§ 7.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section 7.2.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

## **§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors to perform the Work in accordance with the requirements of the subcontracts and this Agreement.

## **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

## **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Subject to the rate limitations in Section 6.1.5 of this Agreement or in the Guaranteed Maximum Price Amendment, rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. For purposes of this paragraph the term "minor repairs" means repairs which are required under any rental agreement, are not covered by insurance, and do not exceed One Hundred Dollars and 00/100 cents (\$100.00) per occurrence or in the aggregate a total of Two Hundred Dollars and 00/100 cents (\$200.00) per piece of machinery or

equipment.

**§ 7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of the Construction Manager's site office, including general office equipment and supplies.

**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

**§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that are directly attributed to this Contract.

**§ 7.6.1.1** The Cost of Construction Manager's liability insurance shall be charged as set forth in the Guaranteed Maximum Price Amendment.

**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents, so long as such royalties, fees, and costs are not otherwise excluded under Article 3 of AIA Document A201 – 2017 or other provisions of the Contract Documents.

**§ 7.6.5.1** The reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Owner and Architect in writing. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

**§ 7.6.6** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

**§ 7.6.7** Costs of document reproductions and delivery charges.

**§ 7.6.8** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 7.6.9** *Intentionally Omitted.*

**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior written approval.

**§ 7.6.11** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties directly connected with the Work.

**§ 7.7 Other Costs and Emergencies**

**§ 7.7.1** Other costs incurred in the performance of the Work, with the Owner's prior written approval.

**§ 7.7.2** Costs not resulting in whole or in part from the negligence of Construction Manager or its Subcontractors or their failure to properly perform their duties hereunder and reasonable costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

## **§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

## **§ 7.9 Costs Not To Be Reimbursed**

**§ 7.9.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2;
- .2 Unless included in the Schedule of Values and payment is specifically approved in writing by the Owner for a particular employee, bonuses, profit sharing contributions, incentive compensation, deferred compensation, stock options, contributions (other than Workers’ Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, or Federal Unemployment Insurance), gratuities, entertainment expense, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as specifically provided in Section 7.2;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Costs due to the negligent performance of or failure to perform the Work by the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Costs for transportation and subsistence incurred by the Construction Manager’s employees stationed at the Home Office;
- .11 Expenses for travel, including Construction Manager-supplied vehicles for personal use, incurred by Construction Manager’s employees while traveling for purposes other than the direct execution of the Work;
- .12 Fines other than those due to the acts or omissions of Owner or its agents;
- .13 Consultants to the Construction Manager not previously approved, in writing, by the Owner;
- .14 Cost for General Conditions which exceed the amount in the Construction Manager’s Schedule of Values, unless subject to an approved Change Order or claim in accordance with the Contract Documents;
- .15 Costs incurred due to labor disharmony, unrest, or strikes, including, but not limited to, delays, security, legal expenses, fines, and work stoppages or slowdowns;

- .16 Corporate accounting, check, and accounting processing costs shall not be reimbursed except to the extent such costs are incurred for on-site personnel and written approval for such costs is obtained from the Owner; and
- .17 Other costs, damages, or expenses specifically excluded elsewhere in the Contract Documents.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** *Intentionally Omitted.*

**§ 9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee.

**§ 9.3** All Subcontractors shall conform and be subject to the requirements of the Contract Documents.

**§ 9.4** Subcontractor agreements shall, at Owner's discretion, be assignable to the Owner and terminable at Owner's convenience in the event Construction Manager is terminated by the Owner.

## **ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be in accordance with generally accepted accounting procedures. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. Pre-audited or negotiated hourly rates and unit prices set forth in the Guaranteed Maximum Price Amendment and rates for Contractor Controlled Insurance approved by the Owner in the Guaranteed Maximum Price Amendment shall not be subject to subsequent audit. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. If necessary upon completion of an audit by the Owner, the Construction Manager and the Owner shall execute a Change Order to reflect the Cost of the Work as shown by the Owner's audit.

## **ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

**§ 11.1** **Progress Payments**

**§ 11.1.1** Based upon Applications for Payment properly submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

**§ 11.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

**§ 11.1.3** Provided that a properly submitted Application for Payment is received by the Architect not later than the « 5<sup>th</sup> » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « 5<sup>th</sup> » day of the « following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « forty-five » ( « 45 » ) days after the Architect receives the Application for Payment.

**§ 11.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, received invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

**§ 11.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents and approved by Owner and Architect. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

**§ 11.1.5.1** The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require and shall include the original budgeted amounts for each line item. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 11.1.5.2** The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 11.1.5.3** If the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and Owner.

**§ 11.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 11.1.7** In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 11.1.7.1** The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent approved schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect and Owner determine to be reasonably justified; and
- .4 The appropriate portion of the Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 11.1.7.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect or Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation;
- .6 Retainage withheld pursuant to Section 11.1.8; and
- .7 Amounts being withheld by the Owner as otherwise provided in the Contract Documents.

**§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

« Five percent (5%) »

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

« »

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

« The Owner, at its sole discretion, may elect to reduce the amount of retainage withheld from future Applications for Payment when the Work is at least fifty percent (50%) complete. Any reduction or release of retainage or a portion thereof, shall not be a waiver of: (i) any right to withhold retainage in connection with other payments to the Construction Manager; or (ii) any other right or remedy the Owner may have under the Contract Documents, at law or in equity. Consent of the surety shall be obtained by the Construction Manager before the request to release any retainage. Consent of the surety must be accompanied by a certified copy of the agent's authority to act on behalf of the surety.

Payments to Subcontractors shall be subject to retainage as described in Section 11.1.8. In addition, when the Work is fifty percent (50%) complete, and if the Construction Manager continues to perform satisfactorily and any nonconforming Work identified and noticed prior to that time by the Architect or the Owner has been corrected by the Construction Manager and accepted by the Owner, the Owner, in its sole discretion, may determine that no further retainage shall be retained from progress payments due to the Construction Manager. However, following fifty percent (50%) completion of the Work, the Owner may withhold additional retainage from a subsequent progress payment, not to exceed five percent (5%) in order to allow the Owner to retain two and one-half percent (2.5%) total retainage through the completion of the Work. Subsequent to reducing retainage, the full retainage of payments authorized (up to five percent [5%] of each subsequent progress payment application) may be retained if the Owner determines the Construction Manager's performance is unsatisfactory. The Owner may retain sufficient funds to secure completion of the Work or correction of any Work. If the Owner retains such funds, the amount retained shall not exceed two and one-half (2.5) times the estimated value of the Work remaining to be completed or corrected.

The Work shall be deemed fifty percent (50%) complete when the Construction Manager's approved Pay Applications, excluding the value of materials stored offsite, equal or exceed fifty percent (50%) of the value of the Guaranteed Maximum Price, except the value of materials stored on-site shall not exceed twenty percent (20%) of the value of Construction Manager's approved Pay Application for the purpose of determining whether the Work is fifty percent (50%) complete. »

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

« »

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 11.1.10** Except with the Owner’s prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

**§ 11.1.11** *Intentionally Omitted.*

**§ 11.1.12** In taking action on the Construction Manager’s Applications for Payment the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager.

## **§ 11.2 Final Payment**

**§ 11.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager within forty-five (45) days of completion of all of the following conditions:

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
- .4 the final accounting has been approved by Owner and its auditor.

**§ 11.2.2** Within 30 days of the Owner’s receipt of the Construction Manager’s final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Construction Manager and Architect that it will not conduct an audit.

**§ 11.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within twenty-one (21) days after completion of the audit, submit a written report based upon the auditors’ findings to the Architect and Construction Manager.

**§ 11.2.2.2** Within twenty-one (21) days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

**§ 11.2.2.3** If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

**§ 11.2.3** The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

« »

## **§ 11.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » « »

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017.

### § 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Litigation in a court of competent jurisdiction

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Sections 5.1 and 5.2.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 If the Owner or the Construction Manager terminates this Agreement prior to commencement of the Construction Phase, the Construction Manager shall be compensated for the portion of the Preconstruction Phase services performed prior to receipt of notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Sections 5.1 and 5.2.

### § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

#### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017. Following execution of the Guaranteed Maximum Price Amendment, if the Owner or Construction Manager terminates this Agreement after commencement of the Construction Phase, the Construction Manager shall be compensated in accordance with Article 14 of AIA Document A201 – 2017.

#### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time

of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 13.2.3** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### **§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Section 6.1 of this Agreement.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**§ 14.1** Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### **§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such written consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 14.2.2** The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

### **§ 14.3 Insurance and Bonds**

**§ 14.3.1** The Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, as modified, and elsewhere in the Contract Documents. Construction Manager shall not start the Work until proof of such insurance is provided to Owner.

**§ 14.3.1.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given.

**§ 14.5** Other provisions:

### **§ 14.5.1 Ownership and Use of Documents**

Section 1.5 of AIA Document A201 – 2017 shall apply to both the Preconstruction and Construction Phases.

### **§ 14.5.2 Governing Law**

Section 13.1 of AIA Document A201 – 2017 shall apply to both the Preconstruction and Construction Phases.

## ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Exhibit C - Weather Days

Exhibit D - Contractor's North Carolina Sales and Use Tax Affidavit

Exhibit E - Sales Tax Statement

Exhibit F - Edifice Preconstruction Scope of Services, dated February 12<sup>th</sup>, 2025

Exhibit G - Edifice Preconstruction Services Fee, March 4<sup>th</sup>, 2025

This Agreement is entered into as of the day and year first written above.

(SEAL)

(SEAL)

OWNER (Signature)

BY: Brian Matthews County Manager

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

BY: Michael A. Carlisto Executive Vice President

(Printed name and title)

Approved as to Legal Form: CJB

This Instrument Has Been Preaudited In The Manner Required By The Local Government Budget And Fiscal Control Act

Deputy Finance Officer

# Additions and Deletions Report for

## AIA® Document A133® – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:58:05 EDT on 04/09/2025.

### Changes to original AIA text

#### PAGE 1

**AGREEMENT** made as of the «\_\_\_\_\_» day of «\_\_\_\_\_» in the year «\_\_\_\_\_»

Union County, North Carolina

500 N. Main Street

Monroe, NC 28112

«Edifice, LLC

4111 South Boulevard

Charlotte, NC 28209

North Carolina General Contractor's License #10514 »

«Union County Water Operation Center »

«4600 Gold Mine Rd

Monroe, NC 28110 »

«Progressive Architecture Engineering, P.C. »« »

«330 South Tryon Street, Suite 500 »

«Charlotte, NC 28202 »

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EXHIBIT E SALES TAX STATEMENT

EXHIBIT F Edifice Preconstruction Scope of Services, dated February 12<sup>th</sup>, 2025

EXHIBIT G Edifice Preconstruction Services Fee, dated March 4<sup>th</sup>, 2025

« The project is currently proposed to be constructed on the premises of the current operations center in Monroe, NC. The anticipated building size is approximately 30,000 sq. ft. and will contain general offices for Administration, Engineering, Operations, Customer Service that includes customer friendly drive-thru for various transactions and warehouse space. In addition to this, a Renovation of approximately 3,300 gsf of existing Ops Center to leverage efficiencies in space utilization. »

**PAGE 3**

« To Be Determined »

«Currently the project budget is Fourteen Million Dollars (\$14,000,000.00) »

.1— Design phase milestone dates, if any:

«TBD »

.2—Construction commencement date:

«TBD »

.3—Substantial Completion date or dates:

«TBD »

.4—Other milestone dates:

«TBD »

« Not Applicable »

« Not Applicable »

« Not Applicable »

Christopher Boyd

Facilities Management Director

Union County

1407 Airport Road

Monroe, NC 28110

#### **PAGE 4**

«Christopher Boyd

Facilities Management Director

Union County

1407 Airport Road

Monroe, NC 28110 »

.1—Geotechnical Engineer:

.2—Civil Engineer:

.3—«Terracon Consultants, Inc. »»» »

«2701 Westport Road »

«Charlotte, NC 28208 »

«704-509-1777 »

.2—Civil Engineer:

« »»» »

« »

.3—Other, if any:

TBD

**.4 Building Commissioning Services:**

**To Be Determined**

«Donald Green »

«Sr. Project Manager »

«Progressive Architecture Engineering, P.C. »

«330 South Tryon Street, Suite 500 »

«Charlotte, NC 28202 »

«DGreen@weareprogressive.com »

« Michael A. Carlisto »

«Executive Vice President »

«Edifice, LLC»

«4111 South Boulevard»

«Charlotte, North Carolina 28209»

«mcarlisto@edificeinc.com »

«704-332-0900 »

« See attached Preconstruction Services Scope and Fee »

**PAGE 5**

« Construction Manager will be required to follow State of North Carolina guidelines for prequalification of Subcontractors for all bid packages and to present for review and approval a HUB participation plan.

On public projects in North Carolina, follow all procurement requirements for Construction Management at Risk projects as written in NC G.S. 143-128. »

« TBD – Implement Design Documents into the contract at GMP »

**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information that modify the basis for the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment.

**§ 1.3** Neither theThe Owner's norrepresentative shall not be changed without ten days' prior notice to the Construction Manager. The Construction Manager's representative shall not be changed without ten days' Owner's prior notice to the other party written approval which shall not be unreasonably withheld.

**§ 1.4** Any reference to the AIA Document A201™ – 2017, General Conditions of the Contract for Construction refers to the modified version of that document negotiated by Owner and Construction Manager.

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**User Notes:**

(67f6dece7c7c23ee00c0d625)

## **§ 2.1 The Contract Documents**

The Contract Documents form the Contract and consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8 to the Drawings and Specifications prepared by the Architect. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

## **§ 2.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and in that it has represented itself as having expertise in estimating scheduling and construction means and methods, as well as with work of similar scope, size, and complexity. Construction Manager further covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents will require the Construction Manager to contract directly with such Subcontractors as may be necessary for construction or supply of the Project. All such contracts, and the procurement of such contracts, shall be issued consistent with the applicable provisions of this Agreement and the General Conditions.

## **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials and Substances; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager. To the extent there is a conflict between the terms of the A201-2017 and this Agreement, the terms of this Agreement shall govern.

## **PAGE 6**

**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager. To the extent there is a conflict between the terms of the A201-2017 and this Agreement, the terms of this Agreement shall govern.

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1 and 3.2 The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently and are the only services authorized to be performed based on the execution of this Agreement. No Construction Phase services shall be commenced and Construction Manager shall not be entitled to be paid for any services other than the Preconstruction Phase services unless and until the Owner and Construction Manager execute the Guaranteed Maximum Price Amendment, and the Owner issues a written Notice to Proceed with respect to the Construction Phase services. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

## **§ 3.1 Preconstruction Phase**

### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect or Owner may require.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. At the start of the Preconstruction Phase, the Construction Manager shall conduct a project conference attended by the Architect, Owner, and others as necessary.

### **§ 3.1.3 Consultation**

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide~~make~~ recommendations to the Owner and Architect, consistent with the Project requirements, on~~with~~respect to constructability, availability of materials and labor, time requirements for procurement, installation and construction, prefabrication, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and separation of the Project contracts for various categories of Work, keeping in mind that the time sensitive nature of this Project and that any such accommodations shall not materially impact time for design or construction in a negative manner. In addition, the Construction Manager shall give to the Architect all data of which it is aware concerning patents or copyrights for inclusion in Contract Documents.

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project~~building information modeling and digital data protocols for the Project.~~

### **§ 3.1.4 Construction Management Plan**

**PAGE 7**

The Construction Manager shall prepare a Construction Management Plan for the Project and shall make recommendations for revisions to the plan throughout the duration of the Project, as may be appropriate. In preparing the Construction Management Plan, the Construction Manager shall consider the Owner's schedule, budget, and design requirements for the Project. The Construction Manager shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be presented to the Owner for acceptance. During the Preconstruction Phase, the Construction Manager shall make the recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan.

### **§ 3.1.45 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified in accordance with the Construction Management Plan, the Construction Manager shall prepare and periodically~~regularly~~ update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's written

approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

### **§ 3.1.56 Phased Construction**

The Construction Manager, in consultation with the Architect and Owner, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### **§ 3.1.67 Cost Estimates**

**§ 3.1.67.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's written approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 3.1.67.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval in writing. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

**§ 3.1.67.3** If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 3.1.78** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's written approval.

**§ 3.1.89** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

**§ 3.1.910** The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and written approval.

**§ 3.1.4011** If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

### **§ 3.1.11 3.1.12 Approvals by Regulatory Services**

To the extent requested by Owner, the Construction Manager may coordinate transmittal of documents to regulatory agencies for review and, in such case, shall advise of potential problems in completing such reviews within the time required to complete the Project within the Contract Time.

**§ 3.1.13 Public Meetings**

The Construction Manager shall prepare information for and attend public meetings regarding the Project as requested by Owner.

**§ 3.1.14 Cost Management**

**§ 3.1.14.1 Cost Control**

The Construction Manager shall assist the Owner in preparing documents concerning the Project and Construction Budget and for use in obtaining or reporting on Project funding. The documents shall be prepared in a form approved by the Owner.

**§ 3.1.14.2 Project and Construction Management Plan Revision**

The Construction Manager shall make recommendations to the Owner concerning the design changes that may result in revisions to the Project and Construction Management Plan and the divisions of the Work required for the Project.

**§ 3.1.14.3 Value Engineering Studies**

The Construction Manager shall provide value engineering recommendations to the Architect for review and the Owner for written approval for major construction components, including cost evaluations of alternative materials and systems.

**§ 3.1.15 Time Management**

**§ 3.1.15.1 Revisions to Project Schedule**

As necessary throughout the Preconstruction Phase, the Construction Manager shall recommend revisions to the Project Schedule for review by the Architect and written approval by the Owner.

**§ 3.1.15.2 Pre-Bid Project Schedules**

Prior to transmitting Contract Documents to bidders, the Construction Manager shall prepare a Pre-Bid Project Schedule for each part of the Project for review by the Architect and written approval by the Owner and provide the schedule to bidders during the Procurement Phase.

**§ 3.1.16 Preconstruction Phase Reports**

**§ 3.1.16.1 Schedule Reports**

The Construction Manager shall prepare and distribute schedule update reports that shall contrast actual progress against scheduled progress for the Preconstruction Phase and the overall Project and shall make recommendations for review by the Architect and written approval by the Owner for corrective action to ensure that the schedule milestones are met.

**§ 3.1.16.2 Construction Budget Cost Reports**

The Construction Manager shall prepare and distribute project cost reports that shall indicate estimated costs compared to the Project and Construction Budget and shall make recommendations to the Owner for corrective action if the estimated costs exceed the Project and Construction Budget.

**§ 3.1.17 Subcontractors and Suppliers**

**§ 3.1.1417.1** If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

**§ 3.1.1417.2** The Construction Manager shall develop bidders' interest in the Project.

**§ 3.1.1417.3** The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

**§ 3.1.142 3.1.17.4** The Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from pre-qualified Subcontractors in accordance with the Union County Policy for Pre-Qualification of Bidders for Construction Projects and N.C.G.S. § 143-128.1, and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and Owner in accordance with N.C.G.S. § 143-128.1. The Construction Manager may self-perform a portion of the Work only if (i) bidding procedures produce no responsible, responsive bidder for that portion of the Work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the Work, or the Subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner; and (ii) the Owner approves of the Construction Manager's performance of the Work.

### **§ 3.1.18 Procurement**

**§ 3.1.18.1** The Construction Manager shall prepare, for the Architect's review and the Owner's written acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items ("Long Lead Times"). With the Owner's written consent, Construction Manager may, prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items Long Lead Items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them and Owner as part of the Preconstruction Phase Services so long as such procurement complies with all applicable statutory requirements.

### **PAGE 9**

**§ 3.1.18.2** The Construction Manager shall develop lists of potential bidders, publicly advertise bids as prescribed in N.C.G.S. § 143-129, and shall prequalify such bidders for all construction of the Work. It shall be noted in the bid advertisements and associated documents that all submitted bids will be publicly opened and become public records upon opening under Chapter 132 of the North Carolina General Statutes. The Construction Manager shall use the prequalification process determined and developed by the Owner in accordance with N.C.G.S. §143-135.8, provided that the Owner and the Construction Manager shall jointly develop the assessment tool and criteria for the Project, which must include prequalification scoring values and minimum required scores for prequalification. The Construction Manager shall also prepare and transmit to the Owner a list of prequalified and disqualified bidders for each bid package. The Construction Manager shall provide the Owner with the reasons that any prospective bidders have been disqualified. Unless otherwise agreed to in writing by the Owner, the Construction Manager shall have a minimum of 3 prequalified bidders for each bid package. Prior to soliciting or prequalifying bidders, the Construction Manager must submit to the Owner, and the Owner must approve, a document describing the Construction Manager's plan for compliance with N.C.G.S. § 143-128.2. The Construction Manager must also make a good faith effort to comply with N.C.G.S. §§ 143-128 and 143-128.4, and to recruit and select small business entities.

### **§ 3.1.1419 Compliance with Laws**

### **§ 3.1.1420 Other Preconstruction Services**

#### **§ 3.1.20.1 Pre-Bid Conference**

In conjunction with the Architect, the Construction Manager shall conduct a Pre-Bid Conference. These conferences shall be forums for the Construction Manager and Architect to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements,

contractor interfaces, the project administrative requirements, and technical information.

#### **§ 3.1.20.2 Information to Bidders**

The Construction Manager shall develop and coordinate procedures to provide answers to bidders' questions. The Construction Manager shall inform the bidders of their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or Contract Documents. The Construction Manager shall also inform the bidders of the Owner's requirements for scheduling and communication between the parties and shall provide a copy of the most current Project Schedule to the bidders.

#### **§ 3.1.20.3 Addenda**

The Construction Manager shall receive from the Architect a copy of all addenda and review addenda for clarity, consistency, and coordination. The Construction Manager shall distribute a copy of all addenda to each bidder receiving documents.

#### **§ 3.1.20.4 Bid Opening**

The Construction Manager shall act as the fiduciary of the Owner in handling and opening bids. All bids shall be received and opened in a manner agreed upon by the Owner, but in all cases shall be opened publicly. All such bids shall be public records under Chapter 132 of the North Carolina General Statutes upon opening. The Construction Manager shall conduct bid openings and shall coordinate with the Owner and Architect to evaluate the bids. Contracts shall be awarded to the lowest responsive, responsible bidder, taking into consideration quality, performance, and time specified for performance, the cost of construction oversight, time for completion, compliance with N.C.G.S. § 143-128.2, and other factors deemed appropriate by the Owner and advertised as part of the bid solicitation. The Construction Manager shall submit a Guaranteed Maximum Price proposal to submit to Owner that incorporates the Construction Manager's recommendation to the Owner concerning the acceptance or rejection of bids. The Owner may require the selection of a different Subcontractor for any portion of the Work, consistent with N.C.G.S. § 143-128.1, provided that the Construction Manager is compensated for any additional cost incurred.

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#### **§ 3.1.20.5 Construction Contracts**

Construction contracts for the Work required for the Project shall be between the Construction Manager and Subcontractors. The Construction Manager shall not be entitled to additional time to complete the Project due to any delay in entering into contracts with a bidder/Subcontractor except to the extent the delay is due to the actions or inactions of the Owner. The Construction Manager shall also issue the notices to proceed to the Subcontractors upon receipt of the notice to proceed from the Owner to the Construction Manager. The Construction Manager shall not issue Contract Documents or notices to proceed with the Work to the Subcontractors until the Owner and Construction Manager have agreed upon a Final Guaranteed Maximum Price that incorporates the results of the bids from Subcontractors and the Owner has notified the Construction Manager that it can proceed with the Work.

#### **§ 3.1.20.6 Permits, Insurance, and Labor Affidavits**

The Construction Manager shall secure and shall verify that each Subcontractor has secured the required building permits, bonds, insurance, labor affidavits, and waivers necessary for the Project.

#### **§ 3.1.20.7 Analyzing Bids**

Upon receipt of bids, the Construction Manager shall, in conjunction with the Architect and Owner, evaluate the bids, including alternate prices and unit prices, and shall award the subcontracts based on criteria set forth in Section 3.1.20.4 above.

#### **§ 3.2 Guaranteed Maximum Price Proposal**

**§ 3.2.1** At a time to be mutually agreed upon Upon receipt of all bids, or earlier if reasonably requested by the Owner and the Construction Manager in writing, the Construction Manager shall prepare propose a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2., which shall be the sum of the total Cost of the Work, as well as all contingencies, allowances, and the Construction Manager's Fee. At the time of submission of the Guaranteed Maximum Price to the Owner, the Construction Manager shall also submit the Progress Schedule upon which the Guaranteed Maximum Price is based. The Progress Schedule shall be in accordance with the requirements of the Contract Documents. The Guaranteed Maximum Price is the total cost of the Work, as defined herein. The Guaranteed Maximum Price includes the cost of all labor, equipment, supplies, materials, services, and allowances required to complete the Project. The cost data from the Guaranteed Maximum Price shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The Construction Manager's Fee

- .1— A list of the Drawings and Specifications, including all Addenda addenda thereto, and the Conditions of the Contract which were used in preparation of the Guaranteed Maximum Price proposal;
- .2— A list of allowances and a statement of their basis;
- .3— A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2 to supplement the information contained in the Drawings and Specifications;
- .3—4 A statement of the proposed Guaranteed Maximum Price, including a statement Schedule of the estimated Cost of the Work Values organized by trade categories or systems, including allowances, allowances, contingencies, and other items in the Construction Manager's Fee and the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee that comprise the Guaranteed Maximum Price;
- .4—5 The anticipated date Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5— A date by which the Owner must accept the Guaranteed Maximum Price A schedule of the Construction Documents, including issuance dates, upon which the date of Substantial Completion is based.

**§ 3.2.4** In preparing The Guaranteed Maximum Price shall also establish a Construction Manager Construction Contingency allowance. Unless otherwise agreed in writing, the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order Construction Contingency allowance shall be used to perform the Work, address scheduling and coordination problems, correct scope gaps in the bidding of the Project, correct code and regulatory deficiencies and other concealed or unknown conditions that are not submitted and approved as the subject of a Change Order in accordance with the terms of the Agreement. The Construction Manager's use of the Construction Manager's Construction Contingency allowance shall be adequately documented by the Construction Manager with such documentation being provided to Owner in a timely fashion. Once 75% of the Construction Manager's Construction Contingency allowance has been used, Construction Manager must obtain Owner's prior written approval before utilizing the Construction Manager's Construction Contingency allowance for amounts in excess of \$25,000. Items subject to being covered by the Construction Manager's Construction Contingency allowance shall not be the basis for a Change Order request increasing the Guaranteed Maximum Price.

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**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover, Architect, or the Construction Manager discovers any inconsistencies or inaccuracies in the information presented, they the Construction Manager shall promptly notify the Construction Manager, who Owner and Architect in writing and shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

~~§ 3.2.6 If~~ Unless the Owner ~~notifies~~ accepts the Construction Manager that the Owner has accepted ~~Guaranteed Maximum Price and executes~~ the Guaranteed Maximum Price proposal in writing before the date specified in the ~~Guaranteed Maximum Price proposal~~ ~~Amendment~~ and issues a written Notice to Proceed with respect to the Construction Phase of the Project, the Guaranteed Maximum Price proposal shall not be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and ~~and~~ this Agreement shall terminate. Upon such termination, the Construction Manager shall ~~execute the~~ ~~Guaranteed Maximum Price Amendment~~ amending this Agreement, a copy of which the Owner shall provide to the Architect. The ~~Guaranteed Maximum Price Amendment~~ shall set forth the agreed upon ~~Guaranteed Maximum Price~~ with the information and assumptions upon which it is based only be entitled to payment for Preconstruction Services as set forth herein. The Construction Manager shall, if requested by the Owner upon termination, assign to Owner any subcontractor, material supply agreements or other agreements related to the Project that were entered into as part of Preconstruction Services.

~~§ 3.2.7~~ The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the ~~Guaranteed Maximum Price Amendment~~, unless the Owner provides prior written authorization for such costs ~~Prior to the Owner's acceptance of the Construction Manager's~~ ~~Guaranteed Maximum Price proposal~~ and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

~~§ 3.2.8~~ The Owner shall authorize preparation of revisions to the Contract Documents that incorporate and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the ~~Guaranteed Maximum Price Amendment~~. The Owner shall promptly furnish such revised Contract Documents to ~~Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with the schedules agreed to by the Owner, Architect, and the Construction Manager~~. The Construction Manager shall promptly notify the Owner and Architect of any inconsistencies between ~~in writing~~ if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications contained in the ~~Guaranteed Maximum Price Amendment~~ and the revised Contract Documents.

~~§ 3.2.9~~ Unless otherwise approved in writing by the Owner, the Construction Manager may only use buyout savings obtained from certain Subcontractors to offset buyout overages from other Subcontractors. Any buyout savings in excess of buyout overages shall be addressed through a deductive Change Order reducing the ~~Guaranteed Maximum Price~~ to reflect such buyout savings.

### ~~§ 3.2.9 The Construction Manager~~ 10 Taxes

~~The Guaranteed Maximum Price shall include in those taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Any sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed tax refunds paid to the Owner shall be exclusively for the Owner's use and shall not in any way reduce the cost of the Project or impact the Guaranteed Maximum Price. The Construction Manager shall track and report all sales tax in accordance with Exhibits D & E.~~

### ~~§ 3.2.11 Execution of Guaranteed Maximum Price Amendment~~

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~~Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in the Guaranteed Maximum Price Amendment. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment only as specifically provided in the Contract Documents.~~

### ~~§ 3.3 Construction Phase~~

#### ~~§ 3.3.1 General~~

~~§ 3.3.1.2 The Construction Phase shall not commence upon until the Owner's execution of Owner accepts the Construction Manager's Guaranteed Maximum Price proposal executing the Guaranteed Maximum Price~~

Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment issues a written Notice to Proceed with Construction Phase services, and provides the Construction Manager reasonable access to the Site.

### **§ 3.3.2 Pre-Construction Conference**

The Construction Manager, shall conduct a Pre-Construction Conference during which the Construction Manager shall review the reporting procedures, Site operations, and other contractual requirements.

### **§ 3.3.3 Onsite Management and Construction Phase Communication Procedures**

The Construction Manager shall provide and maintain a management team on the Project Site to provide contract administration and shall supervise the Work with the Contract Documents.

### **§ 3.3.24 Administration**

**§ 3.3.24.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

### **§ 3.3.24.2 Contract Administration Procedures**

The Construction Manager shall establish and implement procedures for expediting and processing requests for information, shop drawings, materials and equipment sample submittals, Subcontractor schedule adjustments, Change Orders, substitutes, payment requests, and the maintenance of logs. The Construction Manager shall be the party through whom requests for information, submittals, Subcontractor schedule adjustments, substitutes, Change Order requests, and payment requests shall be submitted.

**§ 3.3.24.3** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017.

### **§ 3.3.24.34 Monthly Report**

### **§ 3.3.24.45 Daily Logs**

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing an accurate record for each day of weather conditions at the Site, Subcontractors working on the Site, portions of the Work in progress, Work accomplished, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The Owner shall have no duty to respond to any information in the daily logs.

### **§ 3.3.24.56 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.4.4 above.

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### **§ 3.3.4.7 Coordination of Testing and Inspection**

Technical inspection and testing required by the State or local authorities, the Architect, or other consultants shall be coordinated by the Construction Manager. The Construction Manager shall be provided with a copy of all inspection

and testing reports on the day of the inspection or test when issued.

#### **§ 3.3.4.8 Quality Review**

The Construction Manager shall establish and implement a program to monitor the quality of construction. The Construction Manager shall inspect the Work for conformance with the Contract Documents and shall guard the Owner against defects and deficiencies in the Work. The Construction Manager shall transmit to the Subcontractor a notice of any nonconforming Work and may reject Work when it is the opinion of the Construction Manager that the Work does not conform to the requirements of the Contract Documents. The Construction Manager is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. The Architect and Owner shall have the final authority to decide the acceptability of the Work.

#### **§ 3.3.4.9 Operation and Maintenance Manuals**

The Construction Manager shall receive from the Subcontractors and provide to the Owner operation and maintenance manuals, warranties, and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents.

### **§ 3.4 Time Management**

#### **§ 3.4.1 Progress Schedule**

The Progress Schedule (also referred to as the “Schedule” or “Construction Schedule”) shall be prepared by the Construction Manager using the critical path method. The Progress Schedule shall be detailed to a degree which will permit proper and complete coordination of all trades for each and every portion of the Work, including any design elements of the Work.

#### **§ 3.4.2 Staging Plan**

The Construction Manager shall prepare and submit a staging plan for the Work that is acceptable to Owner. The Owner must approve the staging plan prior to commencement of the Work at the Site.

### **§ 3.5 Cost Management**

#### **§ 3.5.1 Schedule of Values**

The Schedule of Values shall be established by the Guaranteed Maximum Price Amendment and shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager’s Fee shall be shown as a single, separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and the Owner may require. This Schedule of Values, when approved in writing by the Architect and the Owner, shall be used as a basis for reviewing the Construction Manager’s Applications for Payment. Any changes to the Schedule of Values must be submitted to the Owner for approval before being presented as a Change Order.

### **§ 3.6 Change Order Control**

The Construction Manager shall forward all proposed Change Orders in a request for proposal to the Subcontractor, accompanied by technical drawings and specifications prepared by the Architect. In response to the request for a proposal, the Subcontractor shall submit to the Construction Manager for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed Change Order work. The Construction Manager shall review the Subcontractor’s proposal, shall discuss the proposed Change Order with the Subcontractor and endeavor to determine the Subcontractor’s basis for the cost and time to perform the Change Order work and, as applicable, the effect, if any, on the Guaranteed Maximum Price. The Construction Manager shall present its findings to the Owner and, following Owner acceptance, shall prepare the Change Order documents for signature by the Construction Manager, Architect and Owner. Upon execution of the Change Order documents between the Construction Manager, Architect, and Owner, the Construction Manager shall prepare Change Order documents for signature by the affected Subcontractor. The Construction Manager shall verify that the Work, and any adjustment of time required by the approved Change Orders, has been incorporated into the Subcontractor’s Construction

Schedule.

**§ 3.6.1 Cost Records**

In instances where a lump sum or unit price is not established prior to performing Work either in a request for proposal or in an Amendment to this Agreement, the Owner or Architect shall receive from the Construction Manager records of the cost of payroll, materials and equipment and the amount of payments to subcontractor incurred by the Contractor in performing the Work.

**§ 3.6.2 Trade-Off Studies**

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The Construction Manager shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the Owner and Architect.

**§ 3.7 Additional Construction Phase Reports**

**§ 3.7.1 Schedule Maintenance Reports**

The Construction Manager shall prepare and distribute monthly schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Project Schedule.

**§ 3.7.2 Project and Construction Budget Revisions**

The Construction Manager shall make recommendations to the Owner concerning construction changes that may result in revisions to the Construction Budget or Guaranteed Maximum Price.

**§ 3.7.3 Cash Flow Reports**

The Construction Manager shall, if requested by the Owner, prepare and distribute cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow.

**§ 3.7.4 Change Order Reports**

The Construction Manager shall periodically prepare and distribute Change Order reports during the Construction Phase. The reports shall list all Owner-approved Change Orders by number, a brief description of the Change Order work, the cost established in the Change Order, and percent completion of the Change Order work. The reports shall also include similar information for potential Change Orders of which the Construction Manager may be aware. The reports shall also include a summary of the impact of the Change Orders on the project schedule and completion dates.

**§ 3.7.5 Subcontractor's Safety Program**

The Construction Manager shall review the safety program of each Subcontractor and confirm that each Subcontractor has established a safety program as required by the Contract Documents.

**§ 3.8 Post Construction Phase**

**§ 3.8.1 Record Documents**

The Construction Manager shall coordinate and expedite submittals of information from the Subcontractors for preparation of record drawings and specifications, and shall coordinate and expedite the transmittal of such record documents to the Owner.

**§ 3.8.2 Organize and Index Operations and Maintenance Materials**

Prior to final completion of the Project, the Construction Manager shall compile manufacturers' operations and maintenance manuals, warranties, and guarantees and bind such documents in an organized manner. A minimum of three (3) copies of this information shall then be provided to the Owner.

### **§ 3.8.3 Occupancy Permit**

The Construction Manager shall assist the Owner in obtaining the final occupancy permit by accompanying governmental officials during inspection of the Project, preparing and submitting documentation to governmental agencies, and coordinating final testing and other activities.

### **§ 3.8.4 Closeout Documents and Test Reports**

The Construction Manager shall organize and provide the Owner all closeout documents and test reports that the Subcontractors are required to provide for the Project.

### **§ 3.8.5 Owner Training**

The Construction Manager shall coordinate or provide all training of the Owner's personnel required by the Contract Documents.

### **§ 3.8.6 Occupancy Plan**

The Construction Manager shall prepare an Occupancy Plan for the Project. This plan shall be provided to and approved by the Owner.

## **§ 3.9 Other Services**

The following shall also be provided as part of the Work:

- .1 Services related to the onsite and offsite coordination of Owner-furnished equipment, materials, supplies, and furnishings for the Project;

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- .2 Preparation of a Project financial feasibility study if requested by the Owner;
- .3 Preparation of financial, accounting, or other reports as requested by the Owner or Architect;
- .4 Preparation of an Operation and Maintenance Manual for all materials and equipment reasonably required for the Owner's use of the Project;
- .5 Performance of warranty inspections and correction of warranty items during the warranty period of the Project;
- .6 Services made necessary by the failure to perform by or bankruptcy of a Subcontractor;
- .7 Preparation for and serving as a witness regarding the Construction Manager's observations on the Project in connection with any public or private hearing, mediation, or other legal proceedings;
- .8 Assisting the Owner in public relations activities and preparing information for and attending public meetings; and
- .9 Assisting the Owner through coordination of move-in activities.

## **§ 4.1 Information and Services Required of the Owner**

**§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to**

fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2 Intentionally Omitted.

**§ 4.1.3** The Owner shall establish and periodically update the Owner's budget Construction Budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. ~~The~~ Unless otherwise instructed in writing, the Construction Manager shall be entitled to reasonably rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 4.1.4.3** The Owner, when such services are requested in writing by the Construction Manager, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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#### **§ 4.2 Owner's Designated Representative**

**§ 4.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests Intentionally Omitted.

#### **§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, ~~including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement as modified and executed by the Owner and Architect in relation to the Project and as subsequently amended~~. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

#### **§ 5.1 Compensation**

**« Construction Manager shall be paid a Lump Sum of Eighty-Nine Thousand and Seven Hundred and Ninety-Eight dollars and 00/00 (\$ 89,798.00) which includes all costs, expenses, and fees for Preconstruction Services. See Exhibit "G" – Preconstruction Services Fee and Exhibit F- Scope of services, attached for further information. If the project does not proceed for any reason, then the Construction Manager shall be paid actual costs to date. »**

**« See attached Preconstruction Fee Schedule and Scope of Services for further information. »**

**« See attached Preconstruction Fee Schedule and Scope of Services for hourly rates to be used to calculate fees that are supplemental to any work not covered under the lump sum scope of work in Exhibit F »**

**Individual or Position**

**Rate**

~~§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~

## **§ 5.2 Payments**

~~§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's accurate and complete invoice. Amounts otherwise due but unpaid («forty-five» ( «45» ) days after the invoice date Owner's receipt of the accurate and complete invoice shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~

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~~%«2» % per year»~~

## **§ 6.1 Contract Sum**

~~«The Construction Managers Fee will be finalized and agreed upon by all parties executing this contract in the AIA Document A133-2019, Exhibit A, Guaranteed Maximum Price Amendment.»~~

~~« If a Change Order does increase the Guaranteed Maximum Price, the Construction Manager's Fee for the Work may increase in an amount equal to the Cost of the Work associated with the Change Order plus Construction Manager's Fee as set forth in Section 6.1.2. If a Change Order does not increase the Guaranteed Maximum Price, Construction Manager's Fee shall not be increased. »~~

~~§ 6.1.5 Rental rates for Construction Manager owned equipment shall not exceed percent ( % ) of the standard rental rate paid at the place of the Project.~~

~~« 15% on any work performed by a Subcontractor. The term "Subcontractor" as used herein includes any sub-subcontractors at any level. »~~

~~§ 6.1.5 The rental rate utilized by the Construction Manager shall not exceed the AED Green Book rate for the item. The total rental cost of any Construction Manager-owned item or equipment may not exceed eighty-five percent (85%) of the fair market value of the item the day it was first placed at the site. In addition, rotation of equipment in such a manner as to exceed the above threshold is prohibited. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval. In no event shall any such rentals be paid to Construction Manager or to any affiliate or company owned by or related to Construction Manager unless approved in advance by Owner. Rented or leased vehicles are acceptable as a standard business practice providing it does not constitute a one-time benefit to an employee.~~

~~§ 6.1.5.1 Rental charges for items not listed in the AED Green Book shall be supported with a detailed breakdown of the basic components for the rental charges as well as any backup documentation reasonably requested by the Owner.~~

~~« The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Contract Documents. In the event that Construction Manager does not achieve Substantial Completion of the Work within the Contract Time as established by the Guaranteed Maximum Price Amendment to this Agreement (taking into account extensions of the Contract Time as set forth herein), Construction Manager shall pay Owner liquidated damages in the amount set forth in the Guaranteed Maximum Price Amendment per day for each day that Construction Manager fails to achieve Substantial Completion of the Work. Construction Manager acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty in light of the difficulty of accurately determining the full extent of Owner's damages if this Project is not completed on time. Accordingly, instead of requiring any such proof, Owner and Construction Manager agree that Construction Manager shall pay Owner liquidated damages as set forth above for delays related to Substantial Completion of the Work. »~~

~~« »~~

## § 6.2 Guaranteed Maximum Price

§ 6.2.1 The Construction Manager guarantees that the Contract SumCost of the Work plus the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.2.2 The Guaranteed Maximum Price shall also include a not to exceed allowance for the Construction Manager's general conditions of the Work. Construction Manager shall provide such backup as the Owner may request to substantiate actual general conditions costs incurred with each application for payment, and all such amounts shall be subject to audit as provided herein.

§ 6.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include substantial changes in scope, systems, or kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

## § 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listedshall only occur as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontractsThe Construction Manager shall submit invoices per vendor/subcontractor proposals showing the price paid for all materials, supplies, equipment, rental cost, etc. that are part of the Change Order. In addition, the labor burden and labor rates used for the Change Order work shall be supported with documentation showing that these figures represent the actual cost, unless such labor rates are pre-audited rates approved by the Owner and included in an Amendment. Any cost included in a Change Order may only be the audited and properly documented actual cost.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. No Change Order shall increase the Guaranteed Maximum Price unless the Change Order specifically recites that it has the effect of increasing the Guaranteed Maximum Price.

## § 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7this Article and shall not include any costs associated with home office personnel or any overhead costs, because such items are included as part of the Construction Manager's Fee. For purposes of calculating the Construction Manager's Fee, Cost of the Work shall not include the cost of insurance and bonds.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost or other item is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost or taking any proposed action.

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**§ 7.2 Labor Costs**

**§ 7.2.1** ~~Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Owner shall conduct a Pre-Construction Phase audit of the proposed labor costs for the Construction Manager's personnel or negotiate agreed upon rates with Construction Manager. Based on the results of that audit or negotiated rate, Owner and Construction Manager agree that the hourly rate for each of Construction Manager's employees shall be those set forth in the Guaranteed Maximum Price Amendment to this Agreement. Such hourly rates shall include the following:~~

**§ 7.2.2** ~~Wages~~ That portion of the reasonable wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior written approval.

**§ 7.2.2.1** ~~Wages~~ That portion of the reasonable wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, ~~and limited to the personnel and activities listed below:~~  
*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under ~~Sections~~ Section 7.2.4 through 7.2.3.

**§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors to perform the Work in accordance with the requirements of the subcontracts and this Agreement.

**§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.2** ~~Rental~~ Subject to the rate limitations in Section 6.1.5 of this Agreement or in the Guaranteed Maximum Price Amendment, ~~rental~~ charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. ~~Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. For purposes of this paragraph the term "minor repairs" means repairs which are required under any rental agreement, are not covered by insurance, and do not exceed One Hundred Dollars and 00/100 cents (\$100.00) per occurrence or in the aggregate a total of Two Hundred Dollars and 00/100 cents (\$200.00) per piece of machinery or equipment.~~

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**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

## **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that ~~can bear~~ directly attributed to this Contract.

**§ 7.6.1.1** ~~Costs for self insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

**§ 7.6.1.2** ~~Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval. The Cost of Construction Manager's liability insurance shall be charged as set forth in the Guaranteed Maximum Price Amendment.~~

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, ~~and which do not fall within the scope of Section 7.7.3.~~

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by ~~the Contract Documents, so long as such royalties, fees, and costs are not otherwise excluded under Article 3 of AIA Document A201 – 2017 or other provisions of the Contract Documents.~~

**§ 7.6.5.1** The reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the ~~Architect as required by Article 3 of AIA Document A201 – 2017~~ ~~Owner and Architect in writing.~~ The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

**§ 7.6.6** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

**§ 7.6.9** ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~ *Intentionally Omitted.*

**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior written approval.

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**§ 7.6.11** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties directly connected with the Work.

## **§ 7.7 Other Costs and Emergencies**

**§ 7.7.1** Other costs incurred in the performance of the Work, with the Owner's prior written approval.

**§ 7.7.2** ~~Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201 – 2017.~~

**§ 7.7.3** ~~Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.~~

**§ 7.7.4** The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201 – 2017 or other Conditions of the Contract which may require the

~~Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9 not resulting in whole or in part from the negligence of Construction Manager or its Subcontractors or their failure to properly perform their duties hereunder and reasonable costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.~~

## **§ 7.8 Related Party Transactions**

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

## **§ 7.9 Costs Not To Be Reimbursed**

- .1**— Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, ~~or as may be provided in Article 14;~~
- .2**— ~~Bonuses, profit sharing, incentive compensation;~~
- .2**— Unless included in the Schedule of Values and payment is specifically approved in writing by the Owner for a particular employee, bonuses, profit sharing contributions, incentive compensation, deferred compensation, stock options, contributions (other than Workers' Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, or Federal Unemployment Insurance), gratuities, entertainment expense, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as specifically provided in Section 7.2;
- .3**— Expenses of the Construction Manager's principal office and offices other than the site office;
- .4**— Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5**— The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6**— ~~Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, Costs due to the negligent performance of or failure to perform the Work by the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;~~
- .7**— Any cost not specifically and expressly described in Sections 7.1 to 7.7;

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- .8**— Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~
- .9**— Costs for services incurred during the Preconstruction Phase;—
- .10**— Costs for transportation and subsistence incurred by the Construction Manager's employees stationed at the Home Office;

- .11 Expenses for travel, including Construction Manager-supplied vehicles for personal use, incurred by Construction Manager's employees while traveling for purposes other than the direct execution of the Work;
- .12 Fines other than those due to the acts or omissions of Owner or its agents;
- .13 Consultants to the Construction Manager not previously approved, in writing, by the Owner;
- .14 Cost for General Conditions which exceed the amount in the Construction Manager's Schedule of Values, unless subject to an approved Change Order or claim in accordance with the Contract Documents;
- .15 Costs incurred due to labor disharmony, unrest, or strikes, including, but not limited to, delays, security, legal expenses, fines, and work stoppages or slowdowns;
- .16 Corporate accounting, check, and accounting processing costs shall not be reimbursed except to the extent such costs are incurred for on-site personnel and written approval for such costs is obtained from the Owner; and
- .17 Other costs, damages, or expenses specifically excluded elsewhere in the Contract Documents.

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. *Intentionally Omitted.*

**§ 9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee.

**§ 9.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner. **3** All Subcontractors shall conform and be subject to the requirements of the Contract Documents.

**§ 9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10, at Owner's discretion, be assignable to the Owner and terminable at Owner's convenience in the event Construction Manager is terminated by the Owner.

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The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner in accordance with

generally accepted accounting procedures. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. Pre-audited or negotiated hourly rates and unit prices set forth in the Guaranteed Maximum Price Amendment and rates for Contractor Controlled Insurance approved by the Owner in the Guaranteed Maximum Price Amendment shall not be subject to subsequent audit. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. If necessary upon completion of an audit by the Owner, the Construction Manager and the Owner shall execute a Change Order to reflect the Cost of the Work as shown by the Owner's audit.

## **§ 11.1 Progress Payments**

**§ 11.1.1** Based upon Applications for Payment properly submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

**« »**

**§ 11.1.3** Provided that ~~ana~~ a properly submitted Application for Payment is received by the Architect not later than the ~~« 5<sup>th</sup> »~~ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the ~~« 5<sup>th</sup> »~~ day of the ~~« following »~~ month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~+« forty-five » (« 45 »)~~ days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 11.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents and approved by Owner and Architect. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

**§ 11.1.5.1** The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require and shall include the original budgeted amounts for each line item. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 11.1.5.3** ~~When~~If the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and Owner.

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**§ 11.1.7.1** The amount of each progress payment shall first include:

- .1— That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent approved schedule of values;
- .2— That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3— That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, and Owner determine to be reasonably justified; and

.4—The appropriate portion of the Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

- .1—The aggregate of any amounts previously paid by the Owner;
- .2—The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3—Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4—For Work performed or defects discovered since the last payment application, any amount for which the Architect or Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5—The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6—Retainage withheld pursuant to Section 11.1.8; and
- .7—Amounts being withheld by the Owner as otherwise provided in the Contract Documents.

#### **§ 11.1.8 Retainage**

« Five percent (5%) »

« »

« The Owner, at its sole discretion, may elect to reduce the amount of retainage withheld from future Applications for Payment when the Work is at least fifty percent (50%) complete. Any reduction or release of retainage or a portion thereof, shall not be a waiver of: (i) any right to withhold retainage in connection with other payments to the Construction Manager; or (ii) any other right or remedy the Owner may have under the Contract Documents, at law or in equity. Consent of the surety shall be obtained by the Construction Manager before the request to release any retainage. Consent of the surety must be accompanied by a certified copy of the agent's authority to act on behalf of the surety.

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Payments to Subcontractors shall be subject to retainage as described in Section 11.1.8. In addition, when the Work is fifty percent (50%) complete, and if the Construction Manager continues to perform satisfactorily and any nonconforming Work identified and noticed prior to that time by the Architect or the Owner has been corrected by the Construction Manager and accepted by the Owner, the Owner, in its sole discretion, may determine that no further retainage shall be retained from progress payments due to the Construction Manager. However, following fifty percent (50%) completion of the Work, the Owner may withhold additional retainage from a subsequent progress payment, not to exceed five percent (5%) in order to allow the Owner to retain two and one-half percent (2.5%) total retainage through the completion of the Work. Subsequent to reducing retainage, the full retainage of payments authorized (up to five percent [5%] of each subsequent progress payment application) may be retained if the Owner determines the Construction Manager's performance is unsatisfactory. The Owner may retain sufficient funds to secure completion of the Work or correction of any Work. If the Owner retains such funds, the amount retained shall not exceed two and one-half (2.5) times the estimated value of the Work remaining to be completed or corrected.

The Work shall be deemed fifty percent (50%) complete when the Construction Manager's approved Pay Applications, excluding the value of materials stored offsite, equal or exceed fifty percent (50%) of the value of the

Guaranteed Maximum Price, except the value of materials stored on-site shall not exceed twenty percent (20%) of the value of Construction Manager's approved Pay Application for the purpose of determining whether the Work is fifty percent (50%) complete. »

« »

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements*Intentionally Omitted*.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when within forty-five (45) days of completion of all of the following conditions:

- .1—the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2—the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3—a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
- .4—the final accounting has been approved by Owner and its auditor.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Construction Manager and Architect that it will not conduct an audit.

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§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 40twenty-one (21) days after completion of the audit, submit a written report based upon the auditors' findings to the Architect and Construction Manager.

§ 11.2.2.2 Within seven twenty-one (21) days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of

~~the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

~~« »~~

### **§ 11.3 Interest**

~~% « » « »~~

### **§ 12.1 Initial Decision Maker**

~~§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.~~

~~§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.  
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~

### **§ 12.2 Binding Dispute Resolution**

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

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### **§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

~~§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in SectionSections 5.1 and 5.2.~~

~~§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, Owner or the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.~~

~~§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:~~

- ~~.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;~~
- ~~.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and~~
- ~~.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.~~

~~§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects~~

~~to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.~~

~~§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination~~  
~~terminates this Agreement prior to commencement of the Construction Phase, the Construction Manager shall be compensated for the portion of the Preconstruction Phase services performed prior to receipt of notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Sections 5.1 and 5.2.~~

## **§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment**

### **§ 13.2.1 Termination**

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017. ~~Following execution of the Guaranteed Maximum Price Amendment, if the Owner or Construction Manager terminates this Agreement after commencement of the Construction Phase, the Construction Manager shall be compensated in accordance with Article 14 of AIA Document A201 – 2017.~~

### **§ 13.2.2 Termination by the Owner for Cause**

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- .1— Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2— Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3— Subtract the aggregate of previous payments made by the Owner; and
- .4— Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

~~§ 13.2.2.23 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.~~

### **§ 13.2.3 Termination by the Owner for Convenience**

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201 – 2017, then the Owner shall pay the Construction Manager a termination fee as follows:~~

~~(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)~~

### **§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in ~~Sections~~Section 6.1 and 6.3.5 of this Agreement.

### **§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such written consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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### **§ 14.3 Insurance and Bonds**

#### **§ 14.3.1 Preconstruction Phase**

~~The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~

~~§ 14.3.1.1 Commercial General Liability with policy limits of not less than (\$ ) for each occurrence and (\$ ) in the aggregate for bodily injury and property damage.~~

~~§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$ ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

~~§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.~~

~~§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

#### **§ 14.3.1.6 Other Insurance**

*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

~~§ 14.3.1.7 Additional Insured Obligations.~~ To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions. The additional insured coverage shall be primary and non contributory to any of the Owner’s insurance policies and shall apply to both ongoing and completed operations.

~~§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.~~

### **§ 14.3.2 Construction Phase**

~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents. The Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, as modified, and elsewhere in the Contract Documents. Construction Manager shall not start the Work until proof of such insurance is provided to Owner.~~

**§ 14.3.21.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.

**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 14.5 Other provisions:**

**§ 14.5 Other provisions:**

#### **§ 14.5.1 Ownership and Use of Documents**

Section 1.5 of AIA Document A201 – 2017 shall apply to both the Preconstruction and Construction Phases.

#### **§ 14.5.2 Governing Law**

Section 13.1 of AIA Document A201 – 2017 shall apply to both the Preconstruction and Construction Phases.

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.1—AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2—AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3—AIA Document A133™-2019, Exhibit B, Insurance and Bonds

.4—AIA Document A201™-2017, General Conditions of the Contract for Construction

.5—Building Information Modeling Exhibit, if completed:

.6—Other Exhibits:

*(Check all boxes that apply.)*

AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

*(Insert the date of the E234-2019 incorporated into this Agreement.)*

Supplementary and other Conditions of the Contract:

.7—Other documents, if any, listed below:

Exhibit C - Weather Days

Exhibit D - Contractor's North Carolina Sales and Use Tax Affidavit

Exhibit E - Sales Tax Statement

Exhibit F - Edifice Preconstruction Scope of Services, dated February 12<sup>th</sup>, 2025

Exhibit G - Edifice Preconstruction Services Fee, March 4<sup>th</sup>, 2025

(SEAL) \_\_\_\_\_

(SEAL) \_\_\_\_\_

Approved as to Legal Form: CJB

This Instrument Has Been Preaudited In The

Manner Required By The Local Government

Budget And Fiscal Control Act

Deputy Finance Officer

Variable Information

**PAGE 1**

**AGREEMENT** made as of the «\_\_\_\_\_» day of «\_\_\_\_\_» in the year «\_\_\_\_\_»

«Union County Water Operation Center»

## ***Certification of Document's Authenticity***

**AIA® Document D401™ – 2003**

I, Christopher Brown, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:58:05 EDT on 04/09/2025 under Order No. 20240041313 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ - 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

*(Title)*

*(Dated)*